IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3198 OF 2003

Sudhakar Moru Gharat .. Petitioner.

Vs.

Raigad Zilla Parishad & Ors. .. Respondents.

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Mr. M.R. Deshpande for the Petitioner.
Mr. Sachin Manale instructed by Mr. S.S. Pakale for Respondent Nos.1 and 2.
Mr. V.P. Malwankar, Assistant Government Pleader for Respondent Nos.5 to 7.

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CORAM:KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

3rd April, 2006.

P.C. :

1. The Petitioner who retired as a primary teacher on 31st May, 2003 has prayed in this Petition to set aside the orders dated 21st February, 2003 and 28th February, 2003, Exhibits K and L respectively and the impugned action retiring the Petitioner on 31st May, 2003. It is the grievance of the Petitioner that his date of birth has been wrongly shown as 8th May, 1945 as against his real date of birth 1st March, 1948 in the service book. The Petitioner was given inspection of the service book on 24th July, 1973 when he

found the aforesaid discrepancy. It is pointed out by the Petitioner that even though he has written number of letters to the concerned officer, for changing the birth date and since his request has not been acceded, the Petitioner has approached this Court challenging the decisions rendered by the Respondents.

2. We have heard the learned counsel appearing for the parties. From the record it appears that the Petitioner joined the services of the Primary School maintained by the Respondent Zilla Parishad on 26th June, 1971, wherein his date of birth noted in his service book was 8th May, 1945. The Petitioner for the first time made an application for changes to be made in his service book for changing his date of birth as 1st March, 1948 after about 28 years of joining his service with the Respondent. Instruction 1 of Rule 38 (2) of the Maharashtra Civil Services Rules, 1981 prescribes that normally no application for change in the date of birth as recorded in the service book of the Government servant should be entertained after a period of five years commencing from the date of entry in the Government service. In view of this provision, the Respondents were justified in rejecting the request to change the birth date in his service book. It is the case of the Petitioner that by

his application dated 29th July, 1973 addressed to Respondent No.3 he pointed out the mistake in the date of birth in the service book and requested for correcting the same. In the affidavit in reply Respondent No.2 has stated as under :

> "I say and submit that if Ex. "D" is perused, it is evidenced that the date of the said letter originally typed as dated 25th July, 1977 which is changed by hand to read as dated 25th July, 1973. Secondly, there is no evidence of posting and/or acknowledgment from the addressed i.e. Block Development Officer, Panchayat Samittee Office, Panvel, Dist. : (Kolaba) Raigad. Further, I say that Respondent No.3 has confirmed vide his letter dated 27/06/2002 that the said application is not available in his office as well as there is no entry of the said letter in inward letters register of the year 1973. Hence, the claim of the Petitioner that he has submitted his application for changes in his date of birth in his Service Book is without any supporting evidence. Therefore, can not be accepted. I crave leave to refer to and rely upon the said letter dated 27th June, 2002 as and when produced."

3. As Respondent No.3 has denied the acknowledgment of the letter dated 25th July, 1973, it becomes doubtful that the Petitioner has in fact sent the said letter to Respondent No.3. This is in view of the fact that the Petitioner has not subsequently brought on record and/or mentioned about the letter dated 25th July, 1973 in his letters of 1999. Apart from that, the Petitioner has already retired from service on 31st May, 2003, the Petition has, in our

opinion, become academic and therefore, no useful purpose would be served by entertaining the Petition. There is no substance in the Petition which is accordingly dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.